

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEVIN DEWAYNE KAHAN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TERRY DEWAYNE KAHAN,

Respondent-Appellant,

and

KARA MARIE DAVIS and DEMARA
BRACKETT,

Respondents.

In the Matter of DEVIN DEWAYNE KAHAN,
AMAREA AU'JUANA BRACKETT, and
ERICKA NICHOLE BRACKETT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KARA MARIE DAVIS,

Respondent-Appellant,

and

TERRY DEWAYNE KAHAN and DEMARA

UNPUBLISHED

April 16, 2009

No. 287067

Genesee Circuit Court

Family Division

LC No. 01-114101-NA

No. 287259

Genesee Circuit Court

Family Division

LC No. 01-114101-NA

BRACKETT,

Respondents.

Before: Zahra, P.J., and O'Connell and K. F. Kelly, JJ.

PER CURIAM.

In these consolidated appeals, respondent father Terry Dewayne Kahan appeals as of right from the trial court's order terminating his parental rights to his minor child pursuant to MCL 712A.19b(g) and (j), and respondent mother Kara Marie Davis appeals as of right from the trial court's order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (m). We affirm.

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence and that termination is in the child's best interests, the trial court must terminate the respondent's parental rights. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

The trial court did not clearly err when it determined that clear and convincing evidence supported termination of Kahan's parental rights pursuant to MCL 712A.19b(3)(g) and (j). Kahan's son was 7½ years old at the time of the termination hearing and had spent much of his life in foster care or under a guardianship. Respondent Davis, the mother of Kahan's son, had a substance abuse problem that she was unable to overcome, was in a volatile relationship with the putative father of her other two children, was unable to provide the minor children with a stable home, and had voluntarily relinquished her parental rights to another child. Kahan had been incarcerated periodically for drug offenses after his son was born. He did not take responsibility for his son's welfare or support and was over \$6,000 in arrears in child support. He did nothing to intervene in his son's life, despite knowing that Davis was unable to provide a safe and stable home.

Even after the most recent petition was filed with regard to Kahan's son, and the trial court set forth certain minimum requirements that Kahan needed to fulfill, Kahan did not substantially comply. Kahan did not provide petitioner with any verification of employment or housing, although he testified that he worked part-time as a car detailer, making at most \$250 to \$300 a week, and that he lived in a two-bedroom apartment. Kahan did not even begin to make payments on the child support arrearage. He was offered 18 visits with his son, attended only eight, and was late to four or five of the visits he attended. He did not attend anger management classes as ordered by the court. Compliance with the court's orders would have given the trial court some indication that Kahan could provide his son with proper care and custody within a reasonable time. Accordingly, clear and convincing evidence indicates that Kahan did not provide his son with proper care and custody and would not be able to do so within a reasonable time, warranting termination of his parental rights to his son pursuant to MCL 712A.19b(g).

With respect to subsection (j), the trial court stated that it did not believe that Kahan would harm the minor child, but the court was concerned that Kahan maintained a relationship with Davis and the putative father of her other children and that Kahan and Davis's son witnessed their volatile relationship. Kahan told the trial court that he had spoken with Davis and the putative father of her other children the night before the last day of the hearing, after they had been involved in some sort of violent altercation. Kahan also volunteered information that the window to his apartment had been broken, that there was blood on his bedroom floor and outside the apartment, and that he believed that Davis had broken the window. Apparently the apartment manager informed Kahan that Davis had been taken to the hospital. The trial court did not clearly err in finding that subsection (j) had been established. Given that Kahan could not separate himself from Davis and her volatile and sometimes violent life, and that he had not substantially complied with his service plan, there was a reasonable likelihood that Kahan's son would be harmed if returned to his care.

The trial court also did not clearly err in finding that it was in the minor child's best interests to terminate Kahan's parental rights. MCL 712A.19(b)(5). The trial court acknowledged the bond between Kahan and his son and was impressed that Kahan appeared at all the court hearings. The best interests determination, however, concerns what is in the best interests of the minor child. The trial court correctly stated that the minor child needed a safe and stable home and that neither of his parents had been able to provide that to him at any point in his life. The trial court did not clearly err in finding that it was in the child's best interests to terminate Kahan's parental rights. Kahan did not have a stable home or verifiable source of legal income. He had not substantially complied with the court's orders. His visitation with the child had been sporadic. Although the trial court acknowledged the bond between Kahan and his son, and the court did what it could to maintain that bond by recommending that Kahan be allowed contact with his son after the child was adopted, the trial court's decision to terminate Kahan's parental rights appropriately took into account what was in this child's best interests.

Kahan also argues that his due process rights were violated when the trial court questioned him under oath and provided the attorneys with an opportunity to question him. After Kahan's attorney stated that Kahan chose not to testify, and after the parties rested, the trial court called Kahan to the stand, questioned him under oath, and gave the attorneys the opportunity to question him. Kahan did not challenge this at the hearing. In fact, Kahan's attorney took advantage of the opportunity to ask Kahan what his plans were with regard to continued contact with Davis. Kahan took the opportunity to testify that he planned to move so that Davis did not know where he was.

We review claims of unpreserved constitutional error for plain error affecting a defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). We find that the trial court did not plainly err. Kahan contends that he had the right not to testify at the hearing, much like protection against self-incrimination afforded to a defendant in a criminal trial, and that the trial court violated his constitutional rights when it questioned him under oath. In this case, however, when the trial court was attempting to determine why Davis was not present in court on the last day of the termination hearing, Kahan voluntarily provided information to the trial court about Davis coming to his home the night before, as well as telephone calls from Davis and Demara Brackett, the putative father of Davis's two other children. The trial court questioned Kahan, not only with regard to the whereabouts of Davis,

but also with regard to Kahan's efforts to do what was necessary to care for his son. The trial court asked Kahan what steps he had taken to comply with the court orders and whether he was prepared and could care for the child. The trial court told Kahan that this was his opportunity to explain to the trial court why it should not terminate his parental rights. Under these circumstances, we find no reversible error in the trial court examining Kahan under oath.

Moreover, our review of the transcript does not support Kahan's assertion that the trial court was argumentative and usurped the role of the prosecutor. The trial court's manner was not argumentative and, in fact, the court attempted to give Kahan a chance to provide the court with information that would support a finding that the evidence did not support termination or that termination was not in the best interests of the minor child.

Finally, this questioning did not affect Kahan's substantial rights. The petitioner presented clear and convincing evidence to support termination of Kahan's parental rights pursuant to MCL 712A.19b(3)(g) and (j) without Kahan's testimony. The trial court's questions were not focused on supporting the petitioner's obligation to prove that the statutory requisites were met. To the contrary, the questions addressed Kahan's explanations that would refute the testimony presented by petitioner.

Davis does not challenge the trial court's finding of the statutory grounds for termination or its best interests determination. Rather, she argues that the trial court abused its discretion when it denied her attorney's request for an adjournment on the last day of the hearing. We review a court's ruling on an adjournment for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). A motion for adjournment must be based on good cause and may be granted to promote the interests of justice. *Id.*

Davis testified on the second day of the hearing. Her testimony had not been completed when the trial court adjourned for the day. The trial court stated on the record that it was concerned that Davis had two bench warrants out for her arrest and ordered her to appear in court the next day at 8:15 a.m. Davis had left a message on her attorney's voicemail later that day indicating that she had obtained some records that were needed for the hearing the next day, and Davis's attorney was under the impression that she would appear. Nonetheless, she did not appear. Kahan volunteered information with respect to Davis's whereabouts, indicating that his apartment manager informed him that Davis was taken to the hospital at about 1:30 or 2:00 a.m. The trial court was able to ascertain from hospital personnel that Davis had gone to Hurley Hospital at approximately 3:00 a.m. and had been released at 7:53 a.m. The police were dispatched to the two addresses on record where Davis might have resided, but they did not find her. Davis did not contact her attorney or the trial court to inform them of her whereabouts or to ask that the hearing be adjourned. Davis had appeared late to court proceedings in the past, and the trial court had made it clear to Davis that she needed to appear at 8:15 that morning. By approximately 11:00 a.m., Davis had not appeared or contacted the court or her attorney, and the trial court denied her attorney's request for an adjournment. The court gave its opinion from the bench, the case was concluded at 12:30 p.m., and Davis still had not appeared.

The trial court did not abuse its discretion by denying the request of Davis's attorney for an adjournment. Davis had been late for court proceedings in the past, and the trial court made it clear to her that she needed to be at court that day at 8:15 a.m. for the third day of the hearing. Even if Davis had been released from the hospital just before the time that she needed to be at

the hearing, she could have telephoned the court or her attorney to explain the circumstances or arrived at court as soon as possible after she was released. Davis did neither of these. She simply did not come to the hearing. The injuries that she sustained were not so critical that she needed to stay in the hospital. If she was unable to attend court because of her injuries, at a minimum she should have telephoned the trial court to inform the court of her condition and requested to speak to her attorney or to have the hearing be rescheduled. Based on the information that it had at the time of the hearing, the trial court did not abuse its discretion when it chose not to adjourn the hearing.

Affirmed.

/s/ Brian K. Zahra

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly